

REMARKS

This Amendment is made to the Office Action dated April 16, 2008. Claims 1, 3-8, 10-18 and 20 are pending in this case. By this Amendment, claim 2 has been amended to better define the presently claimed invention. Claim 4 has been amended to include the recitations of claim 5. Claim 5 has been canceled and claim 6 has been amended to depend on claim 4 in view of the cancellation of claim 5. Claim 12 has been canceled without prejudice. Applicants respectfully request reconsideration of the claims in view of the remarks below.

Anticipation Rejection: U.S.C. § 102(e)

The Examiner rejected claims 1, 3-8, 10-13, 15, 16 and 20 under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,629,994 to Gomez et al. (the "Gomez patent"). Applicants respectfully submit that the Gomez patent fails to disclose certain structure recited in the pending claims. Independent claim 1 requires, *inter alia*, that only those second peaks of adjacent rings connected by a link are in phase. Independent claims 4 and 20 require, *inter alia*, that only three second peaks of adjacent rings are aligned (in phase). Applicants are aware that the Examiner has taken the position that the peaks shown in the Gomez patent are out of phase and relies on Figure 6B to support this position. However, Applicants submit that the both the plurality of second and first peaks shown in the embodiment of Figure 6A and 6B are actually in phase. The Gomez patent states the following at column 7, lines 61-64: "As can be seen for example in FIG. 6A, peaks 60,61 are in phase 63, meaning that the peaks 60,61 point in the same direction and are substantially aligned along the longitudinal axis of the stent." Figure 6B is the same

embodiment of the invention and likewise shows the peaks being in phase. It is noted that the peaks and valleys shown in Figure 6B may not be as tightly aligned with each other as is shown in Figure 6A. This may be attributable to drafting inaccuracies which resulted in the peaks and valleys not precisely aligning with each other in this particular figure. However, the specification of the Gomez patent is quite specific in stating that the peaks are in phase. Likewise, the valleys shown in Figure 6A, like the peaks, are in phase as well. Accordingly, Applicants submit that the Gomez patent fails to disclose a structure in which only the second peaks of adjacent rings connected by a link are in phase.

Applicants direct the Examiner to Figures 3B and 3C of the present application which shows the second peaks which are not connected by links to an adjacent ring as being out of phase with a second peak of an adjacent ring. As is clearly shown in Figure 3C, the second peak marked with reference numeral 112 is facing directly opposite a first peak on the adjacent ring. The second peaks which are connected by a link are shown in phase with each other. Therefore, the second peaks which are not connected by a link to an adjacent ring are not in phase with each other. The Gomez patent fails to disclose this particular structure in any of its embodiments. Accordingly, Applicants respectfully request the Examiner to withdraw the Gomez patent as an anticipatory reference.

Obviousness Rejection: U.S.C. § 103(a)

Claims 14, 17 and 18 were rejected under 35 U.S.C. § 103(a) as being unpatentable over the Gomez patent. As addressed above, the Gomez patent fails to disclose the basic structure recited in claim 1. Moreover, Applicants respectfully submit

that the Gomez patent and the present application were, at the time the presently claimed invention was made, each either owned by or subject to an obligation of assignment to Advanced Cardiovascular Systems, Inc. Applicants direct the Examiner's attention to the recorded assignment of the present invention to Advanced Cardiovascular Systems, Inc., which is recorded at Reel/Frame 012472/0919 on January 11, 2002. The present application was filed after the November 22, 1999 effective date of change to 35 U.S.C. § 103(c) which disqualifies § 102(e) prior art from consideration under § 103 if the subject matter of the reference and the claimed invention were commonly owned at the time the claimed invention was made. The Gomez patent was cited as a § 102(e) reference and has been cited in the current Office Action as a § 103(a) reference. Applicants herein state that the Gomez patent and the present application were, at the time the invention was made, each either owned by or subject to an obligation of assignment to the same company. In view of this statement of common ownership, Applicants respectfully assert that the Gomez patent is not a valid 35 U.S.C. § 103 (a) reference and traverse the current rejection. See MPEP § 706.02 (I) (2). Applicants note that they previously pointed out that the Gomez patent fails to qualify as 103(a) art in the Amendment dated May 21, 2007. In view of all of these reasons, Applicants respectfully request the Examiner to withdraw the § 103(a) rejection as to claims 14, 17 and 18.

In view of the foregoing, it is respectively urged that all of the present claims of the application are patentable and in a condition for allowance. The undersigned attorney can be reached at (310) 824-5555 to facilitate prosecution of this application, if necessary.

In light of the above remarks, Applicants respectfully request that a timely Notice of Allowance be issued in this case. Please charge any fees payable in connection with this response to Deposit Account No. 06-2425.

Respectfully submitted,
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